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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

AFSHAN MOHAMMADI,

Plaintiff and Respondent,

v.

MAHNAZ SHAHSAVAR,

Defendant and Appellant.

B284818

(Los Angeles County
Super. Ct. No. LS029306)

APPEAL from an order of the Superior Court of
Los Angeles County, Firdaus F. Dordi, Judge. Affirmed.

Angela Berry for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

Following a bench trial the court granted Afshan Mohammadi's petition for a civil harassment restraining order (CRO) against Mahnaz Shahsavar. On appeal Shahsavar contends the CRO is not supported by substantial evidence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Mohammadi's First Encounter with Shahsavar

Mohammadi dated Shahsavar's former husband, Reza Baba-Ali, while he was still married to Shahsavar. Although Baba-Ali told Mohammadi his marriage was finished and he and his wife were getting a divorce, Mohammadi was skeptical. In early 2016 Mohammadi made an appointment to obtain cosmetology services from Shahsavar. When Mohammadi arrived at Shahsavar's and Baba-Ali's home where Shahsavar worked, Shahsavar recognized Mohammadi from social media posts and believed Mohammadi and Baba-Ali were romantically involved. Shahsavar did not reveal her suspicions to Mohammadi at that time. She told Mohammadi during the appointment that she and her husband had a good marriage, and she spoke of the perils of betrayal. Shahsavar performed the eyebrow service Mohammadi had requested without incident, and Mohammadi left. After her encounter with Shahsavar, Mohammadi broke up with Baba-Ali. Shahsavar and Baba-Ali divorced. Mohammadi did not resume her relationship with Baba-Ali.

2. Mohammadi's Evidence of Harassment

a. Telephone and text messages

Mohammadi testified Shahsavar contacted her by telephone and text message several times between May 2016 and August 2016. According to Mohammadi, during these occasions

Shahsavar called her a whore and an addict and threatened to come to her place of business and “disgrace her.” Mohammadi did not save the text messages. She testified she was very afraid of Shahsavar.

b. *The March 2017 incident at the Starbucks café*

According to Mohammadi’s testimony at trial, on March 17, 2017 Mohammadi was sitting at a patio table at a Starbucks café when Shahsavar approached her. Shahsavar had a wild and angry look on her face. She called Mohammadi names, pulled her arm and hit her chest. When Mohammadi attempted to dial the 911 emergency number, Shahsavar grabbed Mohammadi’s cell phone and threw it against the wall. Mohammadi screamed for other Starbucks patrons to help her. Shahsavar whispered in Mohammadi’s ear, “Miserable girl. My people are chasing you, are after you. . . . I will do whatever I can to destroy you. I kill you.” Shahsavar left, and Mohammadi reported the incident to the police.

Manigeh Jehmoha-Mohamdei, a stranger to both women, had been sitting at a table next to Mohammadi’s at the time of the incident and described the encounter similarly at trial: Shahsavar approached Mohammadi, screamed at her, hit her, grabbed Mohammadi’s cell phone from her hand and threw it. Mohammadi screamed for help. Other patrons heard Mohammadi’s screams and came out of the café. Shahsavar blocked Mohammadi’s path so Mohammadi could not escape the encounter. Mohammadi appeared very frightened. Jehmoha-Mohamdei described Shahsavar as the aggressor in the encounter.

Marie Lamothe-Francois, another patron at the café, was called by Shahsavar to testify in her defense. Lamothe-Francois

did not see Shahsavar hit Mohammadi. However, she heard Mohammadi yelling for help and observed her to be in obvious distress. Shahsavar appeared to be blocking Mohammadi's path, preventing Mohammadi from leaving. In Lamothe-Francois's opinion Shahsavar was the clear aggressor during the encounter.

c. The workplace incident

Six days after the incident at Starbucks, Shahsavar and five companions arrived at the restaurant where Mohammadi worked as a server. Mohammadi had not been scheduled to work that evening, but had been asked by her employer to work after an unidentified caller had requested to be seated at her table. Mohammadi became frightened when she saw Shahsavar with her party. She feared Shahsavar had come to follow through on her threat to disgrace Mohammadi and to physically hurt her. Mohammadi explained to her manager that Shahsavar had attacked her and she did not feel safe serving her. Mohammadi waited at the bar at the restaurant until a friend picked her up and took her home.

d. Evidence of violence against a different victim

Shanaz Motazedian testified about a separate incident involving Shahsavar. Motazedian returned home from military service for a surprise visit with her husband and daughter. When Motazedian opened the door to her home, video camera in hand to record her family's reaction, she was shocked to find Shahsavar in her home. When Shahsavar realized who Motazedian was—her boyfriend's wife—and that Motazedian was filming, she knocked the camera out of Motazedian's hand, pushed her to the wall and put her hand over Motazedian's mouth to prevent her from calling out in pain. Motazedian's testimony and the video recording she had made of the encounter

were admitted into evidence over Shahsavar's relevance objection. Motazedian conceded she had approached Mohammadi's counsel about representing her in a separate action to obtain a restraining order against Shahsavar; Mohammadi's counsel informed the court she was considering representing Motazedian but had not yet been retained; and the court stated it would consider those factors in evaluating the weight of that evidence.

3. Shahsavar's Evidence of the Alleged Incidents

Shahsavar testified at trial and offered a very different version of events. Shahsavar denied sending text messages to Mohammadi. She stated she had telephoned Mohammadi once by mistake in May 2016 and hung up when she realized her error. In September 2016 Shahsavar felt sorry for Baba-Ali and considered staying with him despite his infidelity. At the suggestion of Baba-Ali's psychologist, she telephoned Mohammadi to confirm that the adulterous affair had ended. Shahsavar told Mohammadi she blamed Baba-Ali, not Mohammadi, for the affair. Mohammadi told Shahsavar she was unable to talk at that moment and asked Shahsavar to call her the next day. Shahsavar agreed. The following day Mohammadi told Shahsavar she was no longer involved with Baba-Ali; she was in a serious relationship with someone else. Shahsavar wished her well and ended the conversation.

Shahsavar testified Mohammadi had sent her a text message in January 2017 stating, "Forgive me. I made a mistake and I paid for it."

Shahsavar denied being the aggressor during the incident at the Starbucks café. Shahsavar saw Mohammadi unexpectedly at the café and wanted to tell Mohammadi her marriage had

ended. She approached Mohammadi at the café and calmly asked for a few moments of her time. Mohammadi immediately began screaming and cursing at her. Shahsavar left and walked to her car in the parking lot. Mohammadi followed, continuing to yell and scream at her. Shahsavar lost her temper and yelled at Mohammadi only after Mohammadi had insulted Shahsavar's parents. Shahsavar denied hitting Mohammadi. Shahsavar simply put her hand up to prevent Mohammadi from filming her. Because Mohammadi was so close to Shahsavar's face, Shahsavar's hand accidentally hit the cell phone camera in Mohammadi's hand; and it fell to the ground. Shahsavar never deliberately hit Mohammadi.

Shahsavar acknowledged patronizing the restaurant where Mohammadi worked six days after the encounter at the Starbucks café but explained her companions had surprised her by bringing her there to celebrate her birthday. Although she knew Mohammadi worked at that restaurant, she had no advanced knowledge they would be going there. As soon as Shahsavar and her party were seated on the patio, Mohammadi deliberately seated herself at the bar nearby and made a crude gesture toward Shahsavar with her middle finger. Shahsavar did not respond.

Shahsavar's boyfriend testified he had been seated in the car in the parking lot during the Starbucks' incident and did not hear any screaming. He also testified he was part of Shahsavar's party at the restaurant and no one had harassed Mohammadi.

4. The Court's Ruling

The court found Mohammadi, Lamothe-Francois and Jehmoha-Mohamdei credible and concluded, by clear and convincing evidence, the incident they described at the Starbucks

café amounted to unlawful violence and a credible threat of violence. The court found Shahsavar’s description of events at the café not credible. The court also found more likely than not that Shahsavar had sent some threatening text messages and engaged in some intimidation at the restaurant six days after the incident at the café, but did not believe that evidence rose to the level of “clear and convincing.” Nonetheless, the court ruled, when all the evidence was considered together, Mohammadi had carried her burden to demonstrate by clear and convincing evidence that harassment had occurred and would continue to occur absent a CRO. The court granted Mohammadi’s petition, issued a CRO for a period of three years and ordered Shahsavar to pay Mohammadi \$2,500 in attorney fees.

DISCUSSION

1. Governing Law and Standard of Review

Code of Civil Procedure section 527.6, subdivision (a)(1),¹ provides, “A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section.” Subdivision (b)(3) of section 527.6 defines harassment as “unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. . . .” A “credible threat” of violence is “a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety or the safety of his or her immediate family, and that serves no

¹ Statutory references are to this code unless otherwise stated.

legitimate purpose.” (§ 527.6, subd. (b)(2).) “Unlawful violence” includes “any assault or battery” other than self-defense or defense of others. (§ 527.6, subd. (b)(7).)

The trial court may issue a CRO only after finding by clear and convincing evidence that unlawful harassment exists and is reasonably likely to recur. (§ 527.6, subd. (i) [requiring showing by clear and convincing evidence]; see *Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 499 (*Harris*) [although a single act of unlawful violence may be sufficient to support a CRO, that act alone will not justify a CRO unless the court finds a reasonable probability of future harassment absent the injunction]; *Russell v. Douvan* (2003) 112 Cal.App.4th 399, 402-403 [same].)

We review the trial court’s issuance of a protective order for abuse of discretion and the court’s factual findings supporting the order for substantial evidence. We resolve all conflicts in the evidence in favor of the prevailing party and indulge all legitimate and reasonable inferences in favor of upholding the trial court’s findings. (*Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1226; *Harris, supra*, 248 Cal.App.4th at p. 497.)

2. Substantial Evidence Supports the CRO

Shahsavar emphasizes the court’s finding that neither the text messages Mohammadi insisted Shahsavar had sent to her nor the incident at Mohammadi’s workplace rose to the level of “clear and convincing evidence” of harassment necessary to support a CRO. Consequently, she argues, the “single incident” of violence that occurred at the Starbucks café, without any evidence that violence was likely to recur, was insufficient as a matter of law to support a CRO.

Shahsavar’s argument misapprehends the state of the record. The court’s description of certain evidence as being

insufficient to meet the clear-and-convincing threshold does not mean the court was prohibited from considering that evidence to determine the likelihood of harassment continuing. To the contrary, “[b]ehavior that may not alone constitute [unlawful harassment] logically still might show an intention to resume or continue [unlawful harassment].” (*Harris, supra*, 248 Cal.App.4th at p. 501; accord, *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 189-190; see generally § 527.6, subd. (i) [court “shall receive any testimony that is relevant”].) Here, the court expressly found Mohammadi credible and believed at least some text messages had been sent and that some intimidation at the restaurant had occurred. The court properly considered that evidence in finding harassment would recur absent an injunction. Substantial evidence supports that finding.

Shahsavar also contends the court erred in admitting Motazedian’s testimony because that evidence was offered solely to show Shahsavar’s propensity for violence and that she had acted in accordance with that character trait during the incident at Starbucks. (See Evid. Code, § 1101, subd. (a) [except as provided by statute, “evidence of a person’s character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion”].)

Shahsavar did not object to that evidence as improper character evidence. Accordingly, she has forfeited that argument. (See *People v. Clark* (2016) 63 Cal.4th 522, 603 [failure to make timely and specific objection forfeits claim of evidentiary error on appeal; Evid. Code, § 353 [same]].) The evidence was also admissible to show Shahsavar’s actions in knocking the camera

out of Mohammadi's hand was a deliberate and forceful act, rather than the accident Shahsavar had claimed. (See Evid. Code, § 1101, subd. (b) [character evidence may be admissible to show absence of accident].) In any event, the court did not rely on that evidence in making its ruling, and neither do we in finding substantial evidence to support the CRO.

DISPOSITION

The civil harassment restraining order is affirmed.
Shahsavar is to bear her own costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.